Filed Jan. 27, 1900.

JAMES BRISTOL, as Executor,
Plaintiff in Error,

v.

WASHINGTON COUNTY, STATE OF MINNESOTA.

No. 107.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

C. W. BUNN,
Of Counsel for Plaintiff in Error.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

JAMES BRISTOL, AS EXECUTOR,
PLAINTIFF IN ERROR,

v.

WASHINGTON COUNTY, STATE OF MINNESOTA.

No. 109.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

1. Our proposition that this is a *personal* judgment invalid under *Dewey* v. *Des Moines*, 173 U. S. 193, is not altered by the fact that it is payable *only* out of assets in administration. It is payable out of *all* the assets of deceased (not out of taxed assets only). If valid it is payable in New York, and binding on heirs, devisees, or executors there. It is collectible there if it cannot be satisfied out of assets in Minnesota covered by the ancillary probate.

2. Our position is that a State can, by its legislation and action of tax officers thereunder, create no *personal* claim against a non-resident.

It was asked in argument, What becomes of the tax if

the property is withdrawn from the State? We answer, If it is withdrawn unlawfully or fraudulently, the owner doing so might be liable as for defeating a lien, *i. e.*, not beyond the value of the taxed property. We submit that as to a non-resident, a personal property tax can be no more than a lien; that *it cannot be* a general personal obligation of the person assessed. Suppose a non-resident sells his personal property, *subject* to taxes assessed, deducting these from the selling price. Does he remain subject to personal suit for the taxes, or are they at most only a lien on the property? In our view, they are clearly a lien only. Suppose Mrs. Bristol has sold the taxed property involved here—to a resident of the State, may be—does she still continue liable personally?

3. The true principle is that personal obligations cannot be created against non-residents by mere force of State law. The same rule in this respect applies to the legislative department which was laid down in *Pennoyer* v. *Neff* as to judicial proceedings. If a Court cannot on service by publication create by its judgment a valid personal claim against a non-resident, how can the Legislature or the assessor do the same thing by a law or an assessment?

These questions, we think, should be regarded as settled by *Dewey* v. *DesMoines*.

4. We say that the laws of Minnesota attempt to tax the "*debt*" only: not the mortgage, not the note: that debts simply are not tangible and can have no situs separate from the domicile of the owner. Case of *State tax on foreign held bonds*. The well-considered cases where debts due non-residents are held to have a situs in the State are either (*a*) cases where the resident agent was the

person taxed, or (*b*) where the tax was really on the *note* regarded as a tangible article of property and being held within the State, as in *New Orleans* v. *Stempel*, 175 U. S. 309, or on the mortgage as an interest in real estate. How a non-resident employing a local agent with power to make loans gives the *debt* a local situs is to us not comprehendible. A tax on the debt seems to us most clearly incapable of enforcement as a lien and therefore sustainable, if at all, as a pure tax on the non-resident's person.

This is made more clear by the fact (which we think must be conceded) that no valid procedure was possible in Minnesota *to enforce this tax as a lien on the debts taxed.* The County waited and was compelled to wait either till Mrs. Bristol died, or until she could be found in the State, and thus personal service secured and the tax enforced as a personal claim.

The learned counsel for the County contended that the statute of limitations had not run, because Mrs. Bristol had been out of the State. This argument shows the correctness our contention. Because the argument applies only in case the liability and cause of action is personal. *If the tax was a lien on property having a situs in the State, it could have been enforced at any time against that property.*

C. W. BUNN,
Of Counsel for Plaintiff in Error

f. 109.

IN THE SUPREME COURT OF THE UNITED STATES.

NO. 109, OCTOBER TERM, 1899.

JAMES BRISTOL, as Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,

Plaintiff in Error.

vs.

WASHINGTON COUNTY, STATE OF MINNESOTA,

Defendant in Error.

Reply of Plaintiff in Error to Petition of Defendant for a Rehearing.

C. W. BUNN,
EMERSON HADLEY,
Counsel for the Plaintiff in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

NO. 109, OCTOBER TERM, 1899.

JAMES BRISTOL, as Executor of the Last Will and Testament of Sophia M. Bristol, Deceased,
Plaintiff in Error,
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WASHINGTON COUNTY, MINNESOTA,
Defendant in Error.

Reply of Plaintiff in Error to the Petition of the Defendant for a Re-Hearing.

The defendant in error asks the Court to change its judgment so as to give Washington County judgment for one more year's taxes, to-wit,—the taxes of 1888. The ground of the application is that the statute of limitations, so far as the collection of the taxes of 1888 is concerned, did not commence to run until after July 1st, 1889, and second, that, by virtue of Section 5148, of the General Statutes of Minnesota of 1894, the running of the statute of limitations was interrupted at the death of Mrs. Bristol and did not continue to run until one year after the issuing of letters testamentary.

With regard to the first proposition, it seems to us that counsel for the defendant in error have failed to understand the de-

cision already rendered by this Court. In that opinion, the Court made it clear that Washington County could have commenced proceedings to collect the taxes of 1888 out of the property of Mrs. Bristol on April 1st, 1889; that the tax became a lien upon the property on the date when the tax books were received by the County Treasurer, which, for the tax of 1888, was the first Monday of January, 1889; that if the tax was not paid on April 1st, 1889, it was the duty of the County Treasurer to immediately deliver the delinquent lists to the Clerk of Court and then it was the duty of the Clerk of the Court to immediately issue warrants of distress to be levied upon the property of Mrs. Bristol. This, as the Court held, was in the nature of an action *in rem* against the property. It is true that a citation, which was necessary for a personal judgment, could only be issued and served after a meeting of the county commissioners, but proceedings against the property could have been commenced on April 1st, 1889. Therefore, the statute of limitations had run on April 1st, 1894, unless the running of such statute was interrupted by the death of Mrs. Bristol.

The other claim of the defendant in error is that the running of such statute of limitations was interrupted by virtue of Section 5148, of the General Statutes of Minnesota for 1894, which reads as follows:

"If a person, against whom an action may be brought, dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration."

But this statute does not apply so far as the right to proceed against the property of Mrs. Bristol is concerned. The right to

proceed against the property was not interrupted by her death. The lien upon the property still continued and the County might have proceeded to enforce it. The Supreme Court of Minnesota has held that this Section does not apply to the foreclosure of a mortgage, for the reason that the right to proceed against the mortgaged property is not interrupted by the death of a mortgagor.

See

Hill v. Townley, 45 Minn. 167.

We submit that the decision of the Court should not be further modified.

C. W. BUNN,
EMERSON HADLEY,
Counsel for the Plaintiff in Error.